IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO.279 OF 2006

Shivkumar Suresh Ramdas ...Applicant

vs.

Kiran Vishvanath Raut and others ...Respondents

Mr.P.B.Shah for the Applicant
Mr.Sachindra B. Shetye for Respondent Nos.1 and 2
Mr.Y.M.Nakhwa A.P.P. for State

CORAM: A.S.OKA,J.
DATE : OCTOBER 13,2006.

P.C.:

1. The submissions of the learned Counsel appearing for the parties were heard on the last date. This Revision Application is filed by the original complainant for challenging the order of acquittal passed by the learned Ad hoc Additional Sessions Judge, Nasik.

2. It will be necessary to refer to the facts of the case in brief. The allegation of the Applicant/complainant is that on 24th September 2003 at 7.00 a.m., while the witness Bajrangdas along with one Dinesh Sharma after taking bath in Godavari river were returning to Hanuman Temple, the accused Nos.1 and 2 i.e. the Respondent Nos.1 and 2 herein stopped them and Respondent No.1 herein assaulted the said Bajrangdas with a sharp edged weapon. Two more persons were with the accused Nos.1 and 2. The Respondent Nos.1 and 2 assaulted the said Bajrangdas. The Applicant intervened in the said incident.

However, the first and second Respondent assaulted him with stick. The Respondent No.1 assaulted the Applicant on his lips by a sharp edged weapon. The Respondent Nos. 1 and 2 also threatened to kill them. The Applicant lodged F.I.R. with the concerned Police Station. By the impugned Judgment and order dated 11th July 2005, the learned Judicial Magistrate First Class convicted the Respondent Nos.1 and 2 for offences under section 323, 324, 506 read with section 34 of the Indian Penal Code. The learned Magistrate passed the following order:

> "3. Instead of sentencing them the accused persons at once to any punishment they shall be released on entering into a bond of good behaviour for the period of one year with one surety each of Rs.5000/- and in the meantime they shall maintain good behaviour and peace."

The order of conviction was challenged before the Sessions Court by preferring an Appeal. By the impugned Judgment and order, the order of conviction has been set aside.

3. Shri Shah for the Applicant submitted that the the Appeal preferred by the first and second Respondents was not maintainable in law. He invited my attention to the relevant provisions of Code of Criminal Procedure, 1973. The submission made by Shri Shah is that the Appeal was covered by

section 376 of the said Code of 1973. He submitted that the impugned order is bad in law as the Appeal itself was not maintainable. Secondly, he made submissions on merits of the case. He submitted that the findings recorded by the Appellate Court are perverse. He submitted that there was sufficient explanation for the delay in filing the F.I.R. He invited my attention to the findings recorded by the Trial Court. He submitted that the interference was called for in the revisional jurisdiction.

4. I have considered the submissions. Under sections 374 of the said Code of 1973, an Appeal against an order of conviction by the Judicial Magistrate First Class lies to the court of Sessions. Section 376 carves out exceptions to section 374 of the said Code which reads thus :

. 376 No Appeals in petty cases - Notwithstanding anything contained in section 374, there shall be no appeal by a convicted person in any of the following cases namely :-

(a) where a High Court passes only a sentence of imprisonment for a term not exceeding six months or of fine not exceeding one thousand rupees, or of both such imprisonment and fine;

(b) where a Court of Session or Metropolitan Magistrate passes only a sentence of imprisonment for a term not exceeding three months or of fine not exceeding two hundred rupees, or of both such imprisonment and fine;

(c) where a Magistrate of the First Class passes only a sentence of fine not exceeding one hundred rupees ; or

(d) where, in a case tried summarily, a Magistrate empowered to act under section 260 passes only a

sentence of fine not exceeding two hundred rupees:

. Provided that an appeal may be brought against any such sentence if any other punishment is combined with it, but such sentence shall not be appealable merely on the ground -

(i) that the person convicted is ordered to furnish security to keep the peace; or

(ii) that a direction for imprisonment in default of payment of fine is included in the sentence; or

(iii) that more than one sentence of fine is passed in the case, if the total amount of fine imposed does not exceed the amount hereinbefore specified in respect of the case.

5. It is obvious that clauses (a) to (c) of section 376 will not apply to the present case. Clause (d) provides that the Appeal will not lie where, in a case tried summarily, a the Magistrate empowered to act under section 260 passes only a sentence of fine not exceeding Rs.200/-. It is obvious that even clause (d) will not apply as in the present case the Trial Court did not pass a sentence of fine. The proviso to section 376 carves out exception to clauses (a) to (d). It provides that an Appeal may be brought against any such sentence if any other punishment is combined with it, but such sentence shall not be appealable merely on the ground that the person convicted is ordered to furnish security to keep the peace. It is thus very obvious that the order of conviction passed against the Respondent Nos.1 and 2 was appealable under sub section 3 of section 374 of the said Code of 1973. The learned Trial Judge has not imposed any substantive sentence of imprisonment or payment of fine. Therefore, there is no merit in the first submission.

6. So far as second submission is concerned, it must be borne in mind that in a Revision Application under section 401 of the said Code, it is not permissible to reappreciate the evidence. Perusal of the Judgment of the Appellate Court shows that the learned Judge has considered the entire evidence on record. For the incident of 24th September 2003, F.I.R. was lodged on 27th September 2003. The learned Judge has noted that P.W.No.3 Bajrangdas did not attribute any role during the course of incident to the accused No.2. According to him, accused No.1 assaulted him with a sharp edged weapon on his mouth. According to him, he suffered injury on the upper side of the lip. However, he could not state whether the injury was on right or left side. The learned Additional Sessions Judge observed that there was nothing on record to show that from 24th September 2003 to 27th September 2003 he was admitted in the hospital. The learned Judge came to the conclusion that the version of P.W.Nos.2 and 3 is totally inconsistent. Apart from this fact coupled with unexplained delay in filing the F.I.R., there was no recovery or discovery of sharp edged weapon.

7. Considering all these factors, the learned Additional Sessions Judge has passed an order of acquittal. It is obvious that the view taken by the learned Additional Sessions Judge is a possible view which could have been taken after appreciating the evidence on record. Even in an Appeal against acquittal, it is not permissible to interfere with the

order of acquittal merely because another view or another conclusion is possible to be drawn from the evidence on record. It is well settled that presumption of innocence is further strengthened by an order of acquittal. No interference is called for in a revisional jurisdiction.

Revision Application is rejected.

JUDGE